

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Janine Zajac	Team: Team # 1	CCRB Case #: 201007219	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/27/2010 9:05 PM	Location of Incident: 68 Jackie Robinson Parkway	Precinct: 75	18 Mo. SOL 11/27/2011	EO SOL 11/27/2011	
Date/Time CV Reported Thu, 05/27/2010 9:57 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 05/27/2010 9:57 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Frantz Souffrant	29044	939510	075 PCT
2. POM Joseph Tarlentino	04020	940791	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Frantz Souffrant	Abuse: PO Frantz Souffrant stopped § 87(2)(b)	
B.POM Joseph Tarlentino	Abuse: PO Joseph Tarlentino stopped § 87(2)(b)	
C.POM Frantz Souffrant	Abuse: PO Frantz Souffrant searched § 87(2)(b)	
D.POM Frantz Souffrant	Abuse: PO Frantz Souffrant frisked § 87(2)(b)	
E.POM Joseph Tarlentino	Abuse: PO Joseph Tarlentino frisked § 87(2)(b)	
F.POM Frantz Souffrant	Abuse: PO Frantz Souffrant searched § 87(2)(b)	
G.POM Frantz Souffrant	Abuse: PO Frantz Souffrant searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

## Case Summary

At 9:57 PM on May 27, 2010, § 87(2)(b) filed the following complaint with the CCRB by leaving a message on the Call Processing System (encl. 8a-b).

At approximately 9:05 PM on May 27, 2010, PO Frantz Souffrant and PO Joseph Tarlentino of the 75<sup>th</sup> Precinct stopped § 87(2)(b) and § 87(2)(b) in the vicinity of 68 Jackie Robinson Parkway in Brooklyn. The following allegations resulted.

- **Allegation A – Abuse of Authority:** PO Frantz Souffrant stopped § 87(2)(b)
- **Allegation B – Abuse of Authority:** PO Joseph Tarlentino stopped § 87(2)(b) As § 87(2)(b), § 87(2)(g)
- **Allegation D – Abuse of Authority:** PO Frantz Souffrant frisked § 87(2)(b)
- **Allegation E – Abuse of Authority:** PO Joseph Tarlentino frisked § 87(2)(b) As § 87(2)(b), § 87(2)(g)
- **Allegation C – Abuse of Authority:** PO Frantz Souffrant searched § 87(2)(b)
- **Allegation F – Abuse of Authority:** PO Frantz Souffrant searched § 87(2)(b) As it § 87(2)(b), § 87(2)(g)
- **Allegation G – Abuse of Authority:** PO Frantz Souffrant searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. § 87(2)(b), § 87(2)(g)
- § 87(2)(g), § 87(4-b)
- § 87(2)(g), § 87(4-b)
- § 87(2)(g), § 87(4-b)

Mediation was offered to the § 87(2)(b) brothers but they opted to have their complaint investigated. This complaint was originally assigned to Inv. Inessa Abayev. It was reassigned to the undersigned investigator on July 19, 2010 due to Inv. Abayev's departure from the agency.

## Results of Investigation

### Civilian Statements

#### **Complainant/Victim:** § 87(2)(b)

- § 87(2)(b)-year-old black male, 6'1", 220 lbs, with black hair and brown eyes. § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB by Investigator Abayev on June 11, 2010 (encl. 10a-e). His statement was consistent with his original complaint and with the phone statement he

provided on June 2, 2010 with minor inconsistencies noted below. On May 27, 2010, at about 8:45 p.m., § 87(2)(b) and his brother, § 87(2)(b) were sitting and talking inside § 87(2)(b) black Dodge Ram pick-up truck outside of 68 Jackie Robinson Parkway. § 87(2)(b) was in the driver's seat and § 87(2)(b) was in the front passenger's seat. They had just done some construction work at a building across the street and were filling out paperwork in the car. § 87(2)(b) noticed that a marked patrol car pulled up a little ahead of their car. In a follow-up phone call on July 21, 2010, § 87(2)(b) said that before the officers approached the car, he had one hand on the steering wheel and one hand either in his lap or on the center console. He did not move his hands or reach anywhere and was just talking to his brother. An officer, identified as PO Frantz Souffrant, was flashing his flashlight into the truck. § 87(2)(b) stopped the paperwork, and put his hands up to shield the light from his eyes. PO Souffrant was the passenger of the police vehicle. § 87(2)(b) described PO Souffrant as a bald black male, 180-200 pounds, and approximately 35-36 years old. His partner, identified through investigation as PO Joseph Tarlentino, was a thirty-five or thirty-six year old white male with black hair and a medium build. Both officers were approximately 5'10" tall. In his initial statement to the CCRB § 87(2)(b) said that both officers were in uniform.

PO Souffrant approached § 87(2)(b) on the passenger's side while PO Tarlentino approached § 87(2)(b) at the driver's side. PO Tarlentino instructed § 87(2)(b) to roll down his window. He rolled the window down all the way. PO Tarlentino then told § 87(2)(b) to roll the passenger side window down too. § 87(2)(b) told him that the passenger's window did not work but offered to open the passenger's door instead. In his initial statement to the CCRB, § 87(2)(b) said that PO Souffrant asked him to turn the car on so that PO Souffrant could attempt to roll down the passenger window. § 87(2)(b) opened this door, which stayed open for the rest of the incident.

PO Tarlentino asked what they were doing sitting there. § 87(2)(b) told him that they were doing work across the street and they were waiting for the homeowners to return. While PO Tarlentino was speaking with § 87(2)(b) PO Souffrant began pulling the switch for the automatic window to try to pull it down himself. § 87(2)(b) stated, "It doesn't work, that's why I didn't bring it down and opened the door." PO Souffrant stated twice, "You just be quiet." § 87(2)(b) asked, "What do you mean just be quiet? You're going to break the button for the window." PO Souffrant stated that "This can escalate" and "I'm the law. I can do whatever I want." PO Souffrant then began yelling and screaming for the two males to get out of the car.

PO Tarlentino patted down § 87(2)(b) back and front pockets, and patted down his upper body. PO Souffrant searched § 87(2)(b) by reaching into his pockets. § 87(2)(b) believed that his brother had back and front pockets on his clothing that day. PO Souffrant then approached and stated, "I want to search him." PO Tarlentino told PO Souffrant that he already searched § 87(2)(b) PO Souffrant said, "No, I want to search him." PO Souffrant "taunted" § 87(2)(b) stating, "What are you going to do now? What are you going to do now? Do something now" and "I'm the law." PO Souffrant reached inside of § 87(2)(b) front and back pants pockets.

§ 87(2)(b) then stated, "You don't have permission to search my vehicle." PO Souffrant did not reply and opened the driver's side door, and then opened one of the back passenger side doors and moved a baby seat and stroller stored in the vehicle. He also looked under and behind the seats. PO Tarlentino did not participate in the car search. During the search, § 87(2)(b) was standing toward the back of the truck and PO Tarlentino stood nearby, while § 87(2)(b) was on the other side of the truck.

§ 87(2)(b) asked PO Souffrant for his name his badge number. PO Souffrant said, "No." § 87(2)(b) said, "What do you mean no?" PO Souffrant said, "No, I'm not going to give it to you. As a matter of fact, give me your ID." § 87(2)(b) provided his license. PO

Souffrant also requested § 87(2)(b) ID, but he did not have any with him. PO Souffrant returned to the police vehicle and wrote out a summons for Disorderly Conduct for § 87(2)(b). Ten minutes later, when PO Souffrant gave § 87(2)(b) the summons and returned his ID, § 87(2)(b) again asked PO Souffrant for his information. PO Souffrant stated, “No I’m not going to give it to you.” PO Souffrant then took back the summons and returned to his vehicle.

A dark unmarked car of an unknown color with two plainclothes officers inside arrived. These officers exited their car only when the homeowners for whom § 87(2)(b) and § 87(2)(b) were working arrived on the scene. The officers asked the homeowners to stand back and had a brief conversation with § 87(2)(b) and § 87(2)(b) but did not get involved otherwise. PO Souffrant got out of his car and gave § 87(2)(b) his summons back, as well as a piece of paper where he had written his first and last name. PO Souffrant said, “I’ll see you in court,” or, “Tell it to the judge,” before leaving.

**Victim:** § 87(2)(b)

- § 87(2)(b) *ear-old black male, 6’1”, 300 lbs, with black hair and brown eyes.* § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on June 14, 2010 (encl. 12a-f) by Investigator Abayev and provided a phone statement on June 7, 2010. His statements were consistent with § 87(2)(b) with the following exceptions and new information. In a follow-up call on July 26, 2010, § 87(2)(b) said that he was on the phone when the officers first pulled up. He then hung up his phone and put it on the dashboard, and then his hands were in his lap while the officers approached. He was not sure whether § 87(2)(b) was on his phone as well when the officers first pulled up. § 87(2)(b) described PO Tarlantino as a white male, had blonde or red hair, 5’7”-5’8” tall, and was slightly overweight. He said that the officers were in a black unmarked Chevy and were dressed in t-shirts that read NYPD. After § 87(2)(b) lowered the driver’s side window, PO Souffrant stated that he is “the law” and said, “You all be quiet or else I’ll pull you out of car.” PO Souffrant repeated, “No, I’m the law” and said, “You don’t know who you are messing with.” § 87(2)(b) said, “No, you can’t do what you want because we pay your salary.” PO Souffrant then instructed him to get out of the car. § 87(2)(b) first said, “No, I’m not doing anything wrong,” but then complied. § 87(2)(b) later stated that PO Souffrant pulled his right wrist to take him out of the car and let go once he exited the car.

At some point, PO Souffrant placed his hand over his firearm and said, “Don’t mess with me. I can do whatever I want.” PO Souffrant searched § 87(2)(b) front and back pants pockets. § 87(2)(b) was wearing black pants and possibly a white shirt that day. PO Souffrant next patted down § 87(2)(b) crotch-area and thighs, and lifted up his shirt to see what was underneath. § 87(2)(b) stated, “I didn’t give you permission to search me or my truck.”

§ 87(2)(b) asked PO Souffrant why he was stopped and the reason for the search. § 87(2)(b) also asked PO Souffrant why was searching the truck. PO Souffrant did not answer but continued to say he was “the law.” § 87(2)(b) did not see exactly how PO Souffrant searched the truck but saw that he went inside of the truck and possibly behind the seats. PO Souffrant opened the driver’s side door to look inside and then looked in the passenger’s side door, which was still open.

§ 87(2)(b) then stated that he was “not going to go through this.” He took out his cell phone to call 911 for help. PO Souffrant “tried to smack” the phone from his hand. PO Souffrant extended his arm, but did not take any steps forward and did not actually smack the phone away. § 87(2)(b) stated that the officer could not smack his phone because it was his private property. PO Souffrant told § 87(2)(b) that he needed to do what he said. PO Tarlantino

gave PO Souffrant a look to indicate that he should not continue his actions. PO Souffrant also patted down § 87(2)(b) crotch-area and waist.

PO Souffrant requested § 87(2)(b) ID to issue him a summons. § 87(2)(b) asked PO Souffrant for his badge number. PO Souffrant replied, "I don't have to give you that." § 87(2)(b) said, "What?" and again asked "I need your name and your badge number." § 87(2)(b) followed the officer as he walked away, and repeated, "I need you name and your badge number." § 87(2)(b) followed § 87(2)(b) and asked for the officer's name and badge number. PO Souffrant sat back down in his car with his partner. PO Souffrant, however, ultimately provided his information by writing it down and handing it to § 87(2)(b). The § 87(2)(b) client's son was outside observing most of this incident. He was standing in front of his house, about ten or fifteen feet away.

### **Attempts to Contact Civilians**

Throughout the course of the investigation, contact information was not able to be obtained for the family at whose house the § 87(2)(b) brothers were doing work on the date of the incident.

### **NYPD Statements:**

#### **Subject Officer: PO FRANTZ SOUFFRANT**

- § 87(2)(b) -old black male, 5'11", 220 lbs, with black hair and brown eyes.
- *On the date of the incident he worked from 3:00 PM until 11:35 PM with PO Tarlentino. They were assigned to SNEU and were dressed in uniform. They were driving a marked RMP, #2009.*

#### **Summons**

PO Souffrant prepared summons #§ 87(2)(b)-3 (encl. 14a-b) for § 87(2)(b) on the date of the incident for Penal Law 240.20, disorderly conduct, subsection 3, which pertains to using obscene language in a public place.

#### **Memo book**

PO Souffrant had the following memo book entry pertaining to this incident (encl. 13a-c). At 9:00 PM he wrote that he had one male stopped at 68 Jackie Robinson Parkway. He also wrote that he issued this male a summons for disorderly conduct, specifically for creating a disturbance and cursing at officers.

#### **CCRB Testimony**

PO Souffrant was interviewed at the CCRB on September 1, 2010 (encl. 15a-c). He and PO Tarlentino were patrolling this portion of Jackie Robinson Parkway because it is a known location for drug activity and prostitution. As such, they pay attention to all of the vehicles parked in this area. They drove very slowly past the § 87(2)(b) vehicle, which PO Souffrant described as an SUV. They approached from behind and as they passed it, PO Souffrant noticed the driver say something to the passenger, possibly regarding the officers' presence. He did not hear what was said, but assumed this based on the passenger's next action, which was to reach one hand toward his waistband as if to conceal something. PO Souffrant assumed that the driver saw his uniform and then alerted the passenger. PO Souffrant was the passenger of the car, and told PO Tarlentino to pull over. PO Tarlentino angled the police car in front of the § 87(2)(b) so that he could prevent them from driving away. Once the officers' car was stopped and it was clear they were officers, the driver of the § 87(2)(b) car turned the headlights on. PO Souffrant got out of the car quickly and ran to the passenger's side of the car. He did not know what PO Tarlentino did at this point.

PO Souffrant shined his flashlight into the passenger window and told the passenger to roll down the window. The vehicle had tools and other clutter inside of it. The passenger would not roll the window down and kept one of his hands inside the front of his waistband. PO Souffrant asked him to roll the window down a couple of times, but he only responded by asking why he was being stopped. This lasted for approximately a minute. The driver of the car put the driver's window down. PO Tarlentino told the driver of the car to unlock the doors and he complied. PO Souffrant heard the doors unlock and opened the passenger door. The passenger still had his hand in his waistband when PO Souffrant opened the door. He did not ask the passenger to get out but grabbed his left arm to pull it out of the waistband and pulled him out of the vehicle. PO Souffrant then immediately frisked the passenger's entire waistband and did not find any weapons. PO Souffrant did not see the passenger reach into any area of his waistband other than the front, but frisked the rest of the waistband to ensure he did not have weapons. PO Souffrant did not remember seeing anything in the waistband once he pulled the passenger's hand out of it. PO Souffrant did not recall making contact with any part of the passenger's body other than his waistband. He could not recall what the passenger had been wearing. In PO Souffrant's experience, when someone tries to put something in their waistband, they are trying to conceal something. He was therefore concerned that the passenger had a weapon because he kept his hand partially concealed inside of his waistband so that only his thumb was visible. PO Souffrant was unable to see a bulge under the passenger's hand. There were no other factors that led PO Souffrant to believe the passenger was armed other than his hand in his waistband. He could not recall if he asked any investigative questions, but his suspicion was raised when the passenger responded to his commands to roll the window down and remove his hand from his waistband with questions about why he was being stopped.

PO Souffrant tried to explain to the passenger that the stop went to the level it did because he had not been compliant. He asked the passenger why he did not roll the window down, to which the passenger replied that it was broken. The passenger became irate and asked why he had been pulled out of the car. He said things like, "This is fucking bullshit, you fucking cops do this all the fucking time, the 75 is corrupt." PO Souffrant tried to explain that he had been in fear for his safety, and the passenger continued to go on about how officers abuse their authority. The front passenger door was left open when PO Souffrant pulled the passenger out of the car. PO Souffrant remembered that at some point during the incident the driver was out of the car but he could not recall the circumstances that led up to that. He did not recall having any personal interaction with the driver, but remembered the driver backing up what the passenger was saying in regards to the negative comments about the police. PO Souffrant did not recall entering the § 87(2)(b) vehicle at any point or searching it further than shining his flashlight into it. He did not recall seeing PO Tarlentino enter the car or search it. He did not recall seeing PO Tarlentino frisk the driver of the car and did not recall hearing about a frisk later.

The § 87(2)(b) vehicle was obstructing traffic slightly, and vehicles were starting to line up behind them in the street. Approximately 8-10 people began to gather outside, and the passenger continued to curse. PO Souffrant asked him to stop and he refused, so he decided to issue him a summons and asked him for his ID. PO Souffrant issued him a summons and left the area quickly so as to end the incident. The passenger asked PO Souffrant for his name and shield number, and PO Souffrant said the information would be on the summons and that if he wanted to write his shield number down he could, as he was in uniform. PO Souffrant stated that he filled out a Stop, Question, and Frisk report regarding his interaction with § 87(2)(b).

**Subject Officer: PO JOSEPH TARLENTINO**

- § 87(2)(b) *t-year-old white male, 5'8", 210 lbs, with brown hair and brown eyes.*

- *On the date of the incident he worked from 3:00 PM until 11:35 PM with PO Souffrant. They were assigned to SNEU and were dressed in uniform. They were driving a marked car.*

### **Memo book**

PO Tarlentino did not have memo book entries pertaining to this incident (encl. 16a-b).

### **CCRB Testimony**

PO Tarlentino was interviewed at the CCRB on September 10, 2010 (encl. 17a-c). His statement was consistent with PO Souffrant's with the following exceptions and new information. The car was not running when the officers first observed it. PO Tarlentino did not know what the § 87(2)(b) brothers were doing in the car and never found out. PO Tarlentino and PO Souffrant briefly discussed that they would get out to make sure everything was alright and that the men were okay. He did not suspect them of committing any crime at this point. The officers could see into the driver's window when they passed, and PO Tarlentino did not recall making any observations or seeing any behavior that raised his suspicion of a crime. He did not recall PO Souffrant mentioning any such observation. The only factor that led them to approach the car was that the men were sitting in it and the car was not running.

As soon as the officers approached, both occupants of the vehicle became irate and combative. PO Tarlentino could not recall what the driver said, but remembered that he was yelling and cursing. PO Tarlentino asked the driver if everything was okay, and the driver responded angrily but PO Tarlentino could not recall what he said. Because the driver was so agitated, PO Tarlentino began to suspect that there was possibly something in the car or that something was wrong, such as that the car was stolen. One factor that led PO Tarlentino to believe that the occupants could be committing a crime was their combativeness. Also, the driver would not explain what they were doing in the car, and PO Tarlentino found this suspicious. No other factor in particular led him to believe that the car could be stolen.

PO Tarlentino did not know how long it was until he asked the driver to get out, but said it was "not long." Once he was out of the car, PO Tarlentino frisked the driver to make sure he did not have any weapons. He frisked his waistband, the front and back of both legs, and torso. He did not observe any bulges on the driver that led him to believe he was armed, and he did not recover anything. After the frisk was complete, PO Tarlentino brought the driver to back of the vehicle and PO Souffrant did the same with the passenger. He did not know when PO Souffrant asked the passenger to get out, and was not able to hear what was happening at the passenger side of the car while he frisked the driver. He did not see PO Souffrant frisk or search the passenger. He could not remember if PO Souffrant had further interaction with the passenger at the back of the car. Both officers interacted with both occupants at the back of the car, but PO Tarlentino did not recall PO Souffrant making physical contact with the driver. PO Tarlentino did not recall looking into the car at any point.

PO Tarlentino then remained at the back of the car with the two individuals and tried to calm them down while PO Souffrant returned to the front of the car and looked inside. PO Tarlentino could not recall which side of the car PO Souffrant approached, but knew that he leaned into the car and looked inside briefly. PO Souffrant was at the front of the car for a couple of seconds. PO Tarlentino could not recall what the inside of the car looked like or what was inside. Both of the front doors were open from when the occupants got out. PO Tarlentino tried to explain to the men that they were only trying to make sure that everything was okay and that they had raised the officers' suspicion by being combative and refusing to comply with requests for proof that the vehicle was theirs. PO Souffrant looked in the grabbable area to make sure that the men would not pull out a weapon when they returned to their car. PO Tarlentino could not specify where exactly in the vehicle PO Souffrant searched. PO Tarlentino did not ask the driver for his ID.

After PO Souffrant looked in the car he returned to the back of the car and issued a summons, but PO Tarlentino could not recall who the summons was issued to or what it was for. A crowd of approximately seven people had begun to form because the occupants had been yelling. The officers eventually determined that the vehicle did belong to the occupants, but PO Tarlentino could not recall how they determined this. He could not recall if he completed a Stop, Question, and Frisk Report for this incident and did not know if PO Souffrant prepared one either.

### **NYPD Documents**

#### **Stop, Question, and Frisk Log**

The Stop, Question, and Frisk Log for the date of the incident (encl. 18a-e) does not indicate that reports were completed for either § 87(2)(b) or § 87(2)(b).

#### **Summons for Incident and Disposition**

- On July 20, 2010 summons number § 87(2)(b) was dismissed because the original summons was never filed with the court by PO Souffrant or the 75<sup>th</sup> Precinct.

#### **Status of Civil Proceedings**

- Neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim with the City of New York as of September 14, 2010 with regard to this incident.

#### **Civilians Criminal History**

- As of September 14, 2010, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) or § 87(2)(b) (encl. 20a-k).

#### **Civilians CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b) (encl. 7a-b).

#### **Subject Officers CCRB History**

- PO Souffrant has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. 6a).
- PO Tarlentino has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 6b).

### **Conclusion**

#### **Identification of Subject Officers**

PO Souffrant was identified by the summons he issued to § 87(2)(b). Both he and PO Tarlentino admitted to interacting with the § 87(2)(b) brothers on the date of the incident.

### **Investigative Findings and Recommendations**

#### **Allegation A – Abuse of Authority: PO Frantz Souffrant stopped § 87(2)(b)**

#### **Allegation D – Abuse of Authority: PO Frantz Souffrant frisked § 87(2)(b)**

§ 87(2)(b) and § 87(2)(b) both stated that § 87(2)(b) was in the driver's seat of the car and that § 87(2)(b) was the passenger. According to all of the statements provided in this investigation, PO Tarlentino initially approached the driver's side of the car and PO Souffrant approached the



passenger's side. The stops of both men are therefore being pleaded separately against the officers.

The threshold question is whether PO Souffrant's actions constituted a stop. PO Souffrant stated that he instructed PO Tarlentino to angle the police vehicle in front of the § 87(2)(b) car to prevent them from driving away. The Street Encounters Legal Issues memo book insert (encl. 1a) notes that a street encounter rises to a level three stop when the subject is not free to walk away; therefore at this point the interaction would have been considered a level three stop.

According to the Street Encounters Legal Issues Memo Book Insert (encl. 1a), in order to stop an individual an officer must have "a reasonable suspicion that an individual is committing, has committed, or is about to commit a felony or Penal Law misdemeanor." PO Souffrant testified that he instructed PO Tarlentino to stop their RMP based on his observation of the passenger, § 87(2)(b) reaching toward his waistband. PO Tarlentino, however, said that he and PO Souffrant had a brief discussion about whether to stop and speak with the § 87(2)(b) brothers, who were sitting in their parked vehicle, and that the officers approached the brothers only to make sure that the brothers were okay. PO Tarlentino did not make any observation of the passenger making any movements initially that raised his suspicion. In summary, the basis that PO Souffrant provided for stopping § 87(2)(b) was the motion that he made to his waistband as the officers drove by.

§ 87(2)(b) said in a follow-up call with the CCRB that he was on his cell phone when the officers arrived but then hung up and put his phone on the dashboard. He then placed his hands in his lap. PO Tarlentino, who confirmed that he saw into the vehicle, did not see either brother make any furtive movements and said they were just sitting in their truck. The testimony given in the course of the investigation, however, does not support PO Souffrant's observation based on the perspective that PO Souffrant would have had from his sedan into the larger truck that the § 87(2)(b) brothers were seated in. The police vehicle would have been lower to the ground than the § 87(2)(b) brothers' truck, and as a result PO Souffrant's line of vision to the passenger seat of the truck would have been obstructed and indirect. Additionally, this incident occurred at approximately 9:00 PM, raising questions about whether the quality of lighting in the area that would have permitted detailed observation of the movements described by PO Souffrant.

In *People v. McCready* (encl. 3a-d), the court was found that, in a high-crime area, a quick hand motion of someone inside of a vehicle, in and of itself, was not indicative of criminal activity and did not give rise to a reasonable suspicion of a crime. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

The Street Encounters Legal Issues Memo Book Insert also says that in order to frisk someone, an officer must "reasonably suspect he/she is in danger of physical injury," (encl. 1a). In *People v. Powell* (encl. 2a-c), the defendant's actions, including adjusting his waistband, being in a high-crime area in which the incident took place, and providing evasive answers to officers, were found to be innocuous and not constitutive of the reasonable suspicion necessary to initiate a frisk, particularly given that no officers in *People v. Powell* testified to seeing a bulge in the defendant's waistband or elsewhere on his person. Upon approaching § 87(2)(b) at the passenger side, PO Souffrant asked him to remove his hand from his waistband and asked what he was doing there. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) did not answer PO Souffrant's question, responding instead with questions about why he was being stopped. This raised PO Souffrant's suspicion, so he opened the door and pulled § 87(2)(b) out of the car by his wrist and immediately frisked his entire waistband. PO Souffrant did not see any bulges in § 87(2)(b) waistband but frisked the entire waistband anyway based on § 87(2)(b) moving his hand toward the front of his waistband and holding it there, as well as his refusal to answer questions. PO Souffrant said that § 87(2)(b) responded to his requests to roll his window down with questions about why he was being stopped. As illustrated by the referenced case law, § 87(2)(b), § 87(2)(g)

**Allegation B – Abuse of Authority: PO Joseph Tarlantino stopped § 87(2)(b)**

**Allegation E – Abuse of Authority: PO Joseph Tarlantino frisked § 87(2)(b)**

PO Tarlantino approached § 87(2)(b) on the driver's side and then he asked him to step out of the vehicle after § 87(2)(b) responded to his questions in an irate and angry manner. PO Tarlantino stated that it was "not long" after he initially approached § 87(2)(b) that he asked him to step out. This constituted a stop because § 87(2)(b) freedom to drive away or leave was restricted at this point. As indicated in the Street Encounters Legal Issues memo book insert, a street encounter reaches the level of a stop when the subject is not free to walk away (encl. 1a). PO Tarlantino admitted that he then immediately frisked § 87(2)(b) waistband, the front and back of both legs, and torso.

According to the Street Encounters Legal Issues Memo Book Insert (encl. 1a), an officer must have "a reasonable suspicion that an individual is committing, has committed, or is about to commit a felony or Penal Law misdemeanor," in order to stop an individual. PO Tarlantino said that he did not suspect the brothers of any criminal activity when he first approached the car. Once he engaged § 87(2)(b) he became suspicious because § 87(2)(b) would not explain what he and his brother were doing in the car. PO Tarlantino began to suspect that there was possibly something illegal in the car or that the car was stolen. § 87(2)(b) demeanor, however, was the only basis for PO Tarlantino to suspect that something was wrong and nothing objectively indicated to him that the car was in fact stolen. The only factor that led PO Tarlantino to believe that the occupants could be engaged in criminal conduct was their combativeness.

§ 87(2)(b), § 87(2)(g)

The Street Encounters Memo Book Insert (encl. 1a) states that an officer "may frisk the subject for a deadly weapon, or any instrument or article readily capable of causing serious physical injury when the MOS reasonably suspects he is in danger of physical injury." Once § 87(2)(b) was out of the car, PO Tarlantino frisked him to make sure that he did not have any weapons. He frisked § 87(2)(b) waistband, the front and back of both legs, and torso. He did not observe any bulges on § 87(2)(b) that led him to believe he was armed, and he did not recover any objects, let alone any objects which could have reasonably been mistaken for

weapons. § 87(2)(b), § 87(2)(g)

**Allegation C – Abuse of Authority: PO Frantz Souffrant searched** § 87(2)(b)

**Allegation F – Abuse of Authority: PO Frantz Souffrant searched** § 87(2)(b)

According to § 87(2)(b) statement, he saw PO Souffrant search § 87(2)(b) by reaching into his pockets. PO Souffrant then approached § 87(2)(b) and reached into his pockets as well. § 87(2)(b) said that PO Souffrant searched his pockets, but did not corroborate PO Souffrant’s search of § 87(2)(b). Neither officer admitted to searching either of the brothers. Additionally, PO Tarlentino was forthcoming in his statement regarding the frisks of both brothers and regarding PO Souffrant’s search of the vehicle, but denied that either brother was searched. § 87(2)(b), § 87(2)(g)

**Allegation G – Abuse of Authority: PO Frantz Souffrant searched the vehicle in which**  
§ 87(2)(b) **and § 87(2)(b) were occupants.**

As discussed above in the analysis of allegations A and C, § 87(2)(b) actions and demeanor were innocuous and did not constitute reasonable suspicion that he was armed. PO Tarlentino mentioned that PO Souffrant briefly searched the “grabbable area” inside of the car, but similarly failed to cite any factors that led him to suspect that the car held weapons.

The § 87(2)(b) brothers were consistent in their description of PO Souffrant opening the driver’s side door first and looking inside the car and then moving to the passenger side and searching the vehicle by looking behind and underneath the seats. § 87(2)(b) also said that PO Souffrant moved a baby seat and stroller that were inside of the vehicle. PO Tarlentino said that while he waited at the back of the car with the § 87(2)(b) brothers, PO Souffrant returned to the front of the car and leaned into the car and shined his flashlight while he looked inside, though PO Tarlentino could not recall what side PO Souffrant went to or where exactly in the vehicle he looked. PO Souffrant did not recall searching the vehicle. § 87(2)(b), § 87(2)(g)

As per *People v. Torres*, when the facts of a situation present a specific danger to an officer’s safety, it may be proper for the officer to take further action with respect to searching a vehicle. (Kamins, 5.05[4]) (encl. 4a). While PO Souffrant did not admit to searching the vehicle, PO Tarlentino said that PO Souffrant returned to the front of the vehicle and leaned inside of it while shining his flashlight on the interior. PO Souffrant did not indicate any suspicion that there was a weapon in the vehicle – he only stated that the car was messy. § 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

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Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date